

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 189
93RD GENERAL ASSEMBLY

Reported from the Committee on Ways and Means April 12, 2005 with recommendation that House Committee Substitute for Senate Bill No. 189 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

1021L.02C

AN ACT

To repeal sections 198.439, 208.480, and 338.550, RSMo, and to enact in lieu thereof ten new sections relating to the health care provider tax, with an emergency clause.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 198.439, 208.480, and 338.550, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 198.439, 208.431, 208.432, 208.433, 208.434, 208.435, 208.436, 208.437, 208.480, and 338.550, to read as follows:

198.439. Sections 198.401 to 198.436 shall expire on September 30, [2005] 2006.

208.431. 1. For purposes of sections 208.431 to 208.437, the following terms mean:

(1) **"Engaging in the business of providing health benefit services", accepting payment for health benefit services;**

(2) **"Medicaid managed care organization", a health benefit plan, as defined in section 376.1350, RSMo, with a contract under 42 U.S.C. Section 1396b(m) to provide benefits to Missouri MC+ managed care program eligibility groups.**

2. Beginning July 1, 2005, each Medicaid managed care organization in this state shall, in addition to all other fees and taxes now required or paid, pay a Medicaid managed care organization reimbursement allowance for the privilege of engaging in the business of providing health benefit services in this state.

3. Each Medicaid managed care organization's reimbursement allowance

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

shall be based on a formula set forth in rules, including emergency rules if necessary, promulgated by the department of social services. No Medicaid managed care organization reimbursement allowance shall be collected by the department of social services if the federal Center for Medicare and Medicaid Services determines that such reimbursement allowance is not authorized under Title XIX of the Social Security Act. If such determination is made by the federal Center for Medicare and Medicaid Services, any Medicaid managed care organization reimbursement allowance collected prior to such determination shall be immediately returned to the Medicaid managed care organizations which have paid such allowance.

208.432. Each Medicaid managed care organization shall keep such records as may be necessary to determine the amount of its reimbursement allowance. Every Medicaid managed care organization shall submit to the department of social services a statement that accurately reflects such information as is necessary to determine that Medicaid managed care organization's reimbursement allowance.

208.433. 1. The director of the department of social services shall make a determination as to the amount of Medicaid managed care organization's reimbursement allowance due from each Medicaid managed care organization.

2. The director of the department of social services shall notify each Medicaid managed care organization of the annual amount of its reimbursement allowance. Such amount may be paid in monthly increments over the balance of the reimbursement allowance period.

3. The department of social services may offset the managed care organization reimbursement allowance owed by the Medicaid managed care organization against any payment due that managed care organization only if the managed care organization requests such an offset. The amounts to be offset shall result, so far as practicable, in withholding from the managed care organization an amount substantially equivalent to the reimbursement allowance owed by the managed care organization. The office of administration and state treasurer may make any fund transfers necessary to execute the offset.

208.434. 1. Each Medicaid managed care organization reimbursement allowance determination shall be final after receipt of written notice from the department of social services, unless the Medicaid managed care organization files a protest with the director of the department of social services setting forth the grounds on which the protest is based, within thirty days from the date of receipt of written notice from the department of social services to the managed care organization.

2. If a timely protest is filed, the director of the department of social services shall reconsider the determination and, if the Medicaid managed care organization

has so requested, the director or the director's designee shall grant the managed care organization a hearing to be held within forty-five days after the protest is filed, unless extended by agreement between the managed care organization and the director. The director shall issue a final decision within forty-five days of the completion of the hearing. After reconsideration of the reimbursement allowance determination and a final decision by the director of the department of social services, a managed care organization's appeal of the director's final decision shall be to the administrative hearing commission in accordance with sections 208.156 and 621.055, RSMo.

208.435. 1. The department of social services shall promulgate rules, including emergency rules if necessary, to implement the provisions of sections 208.431 to 208.437, including but not limited to:

(1) The form and content of any documents required to be filed under sections 208.431 to 208.437;

(2) The dates for the filing of documents by Medicaid managed care organizations and for notification by the department to each Medicaid managed care organization of the annual amount of its reimbursement allowance; and

(3) The formula for determining the amount of each managed care organization's reimbursement allowance.

2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in sections 208.431 to 208.437 shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. Sections 208.431 to 208.437 and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after the effective date of this section shall be invalid and void.

208.436. 1. (1) The Medicaid managed care organization reimbursement allowance owed or, if an offset has been requested, the balance, if any, after such offset, shall be remitted by the managed care organization to the department of social services. The remittance shall be made payable to the director of the department of revenue.

(2) The amount remitted shall be deposited in the state treasury to the credit of the "Medicaid Managed Care Organization Reimbursement Allowance Fund", which is hereby created for the sole purposes of providing payment to Medicaid managed care organizations. All investment earnings of the managed care organization reimbursement allowance fund shall be credited to the Medicaid managed care organization reimbursement allowance fund.

(3) The unexpended balance in the Medicaid managed care organization reimbursement allowance fund at the end of the biennium is exempt from the provisions of section 33.080, RSMo. The unexpended balance shall not revert to the general revenue fund, but shall accumulate in the Medicaid managed care organization reimbursement allowance fund from year to year.

(4) The state treasurer shall maintain records that show the amount of money in the Medicaid managed care organization reimbursement allowance fund at any time and the amount of any investment earnings on that amount. The department of social services shall disclose such information to any interested party upon written request.

2. An offset as authorized by this section or a payment to the Medicaid managed care organization reimbursement allowance fund shall be accepted as payment of the Medicaid managed care organization's obligation imposed by section 208.431.

208.437. 1. A Medicaid managed care organization reimbursement allowance period as provided in sections 208.431 to 208.437 shall be from the first day of July to the thirtieth day of June. The department shall notify each Medicaid managed care organization with a balance due on the thirtieth day of June of each year the amount of such balance due. If any managed care organization fails to pay its managed care organization reimbursement allowance within thirty days of such notice, the reimbursement allowance shall be delinquent. The reimbursement allowance may remain unpaid during an appeal.

2. Except as otherwise provided in this section, if any reimbursement allowance imposed under the provision of sections 208.431 to 208.437 is unpaid and delinquent, the department of social services may compel the payment of such reimbursement allowance in the circuit court having jurisdiction in the county where the main offices of the Medicaid managed care organization is located. In addition, the director of the department of social services or the director's designee may cancel or refuse to issue, extend or reinstate a Medicaid contract agreement to any Medicaid managed care organization which fails to pay such delinquent reimbursement allowance required by sections 208.431 to 208.437 unless under appeal.

3. Except as otherwise provided in this section, failure to pay a delinquent reimbursement allowance imposed under sections 208.431 to 208.437 shall be grounds for denial, suspension or revocation of a license granted by the department of insurance. The director of the department of insurance may deny, suspend or revoke the license of a Medicaid managed care organization with a contract under 42 U.S.C. Section 1396b(m) which fails to pay a managed care organization's delinquent reimbursement allowance unless under appeal.

4. Nothing in sections 208.431 to 208.437 shall be deemed to affect or in any way limit the tax-exempt or nonprofit status of any Medicaid managed care organization with a contract under 42 U.S.C. Section 1396b(m) granted by state law.

5. Sections 208.431 to 208.437 shall expire on June 30, 2006.

208.480. Notwithstanding the provisions of section 208.471 to the contrary, sections 208.453 to 208.480 shall expire on September 30, [2005] **2006**.

338.550. 1. The pharmacy tax required by sections 338.500 to 338.550 shall expire ninety days after any one or more of the following conditions are met:

(1) The aggregate dispensing fee as appropriated by the general assembly paid to pharmacists per prescription is less than the fiscal year 2003 dispensing fees reimbursement amount; or

(2) The formula used to calculate the reimbursement as appropriated by the general assembly for products dispensed by pharmacies is changed resulting in lower reimbursement to the pharmacist in the aggregate than provided in fiscal year 2003; or

(3) June 30, [2005] **2006**.

The director of the department of social services shall notify the revisor of statutes of the expiration date as provided in this subsection. The provisions of sections 338.500 to 338.550 shall not apply to pharmacies domiciled or headquartered outside this state which are engaged in prescription drug sales that are delivered directly to patients within this state via common carrier, mail or a carrier service.

2. Sections 338.500 to 338.550 shall expire on June 30, [2005] **2006**.

Section B. Because of the need to preserve state revenue, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval.

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